

Before the 2001 OCT 23 P 2:19
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Elkhart Community Schools)	File No. NEC.471.01-18-00.04901543
Elkhart, Indiana)	File No. NEC.471.02-28-00.7800031
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: October 12, 2001

Released: October 16, 2001

By the Common Carrier Bureau, Accounting Policy Division:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by Elkhart Community Schools (Elkhart), Elkhart, Indiana.¹ Elkhart seeks a waiver to allow consideration of its application as timely filed within the filing window established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator) for Funding Year 3 of the schools and libraries universal service support mechanism. For the reasons that follow, we deny Elkhart's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements

¹ Letter from Robert Woods, Elkhart Community Schools, to Federal Communications Commission, filed July 10, 2000 (Request for Review); *see also* Letter from Robert Woods, Elkhart Community Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated March 16, 2000 (SLD Appeal).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. § 54.504 (b)(1), (b)(3).

for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁴ The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁵ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.⁶ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Elkhart applied for discount telecommunication services for Funding Year 3 on January 18, 2000.⁷ Instead of using the appropriate Funding Year 3 FCC Form 471 application, Elkhart applied for support using Funding Year 2 FCC Form 471 applications.⁸ On February 16, 2000, SLD sent Elkhart a letter stating that it declined to accept Elkhart's Funding Year 2 FCC Form 471 because Elkhart's application failed to meet minimum processing standards for Funding Year 3.⁹ SLD informed Elkhart that, because it used the Funding Year 2 FCC Form 471 rather than the Year 3 Form, its application could not be processed.¹⁰ Elkhart subsequently filed a Year 3 FCC Form 471 on February 28, 2000 and requested that it be considered as filed within the Year 3 window.¹¹

4. On March 16, 2000, Elkhart filed an appeal with SLD, stating that, although it used a Funding Year 2 FCC Form 471 for Funding Year 3 in error, its Funding Year 2 FCC Form 471 was nonetheless filed before the Funding Year 3 filing window closed on January 19, 2000.¹² SLD issued an Administrator's Decision on Waiver Request on June 2, 2000, stating that it could not consider Elkhart's request.¹³ Elkhart filed the instant Request for Review, again requesting that its Funding Year 3 FCC Form 471 be considered as timely filed for Funding Year 3.¹⁴

⁴ 47 C.F.R. § 54.504(c).

⁵ 47 C.F.R. § 54.507(c).

⁶ 47 C.F.R. § 54.507(g).

⁷ FCC Form 471, Elkhart Community Schools, filed January 18, 1999.

⁸ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Funding Year 3 Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (Funding Year 2 Form 471).

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Elkhart Community Schools, dated February 16, 2000.

¹⁰ *Id.*

¹¹ FCC Form 471, Elkhart Community Schools, filed February 28, 2000.

¹² SLD Appeal, at 1.

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Elkhart Community Schools, dated June 2, 2000 (Administrator's Decision on Waiver Request).

¹⁴ Request for Review, at 1.

5. Under our rules, SLD is authorized to establish and implement filing periods and program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.¹⁵ Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.¹⁶ A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁷ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁸ The Year 3 FCC Form 471 required more information than the Year 2 FCC Form 471. It would be administratively burdensome if SLD were to accept the Year 2 FCC Form 471, only to return to the applicant to collect missing information that was required in the Year 3 Form 471. In this program, using the correct form and providing the correct information is particularly relevant in processing an applicant's application.

6. In this case, Elkhart asserts that, despite using a Funding Year 2 Form 471 to apply for Funding Year 3 discounts, its application should be accepted as completed within the filing window.¹⁹ Elkhart contends that its forms were filed well within the filing window and it was not notified of the problem until after the filing deadline.²⁰ Elkhart asserts that using the wrong form was a clerical error.²¹ Based on our review of the record, we conclude that Elkhart has provided an insufficient basis for a waiver from the general rule.

7. SLD must review and process thousands of applications each funding year. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.²² It is incumbent upon applicants to determine whether their applications are in compliance with program requirements prior to filing. Because applications may change from year to year, we find that applicants bear the responsibility of determining whether or not the correct form is being used. Elkhart should have determined that it was using the wrong application. The FCC Form 471 application and instructions are funding year

¹⁵ 47 C.F.R. § 54.507(c).

¹⁶ 47 C.F.R. § 1.3; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also* *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ Request for Review, at 1; SLD Appeal, at 1.

²⁰ *Id.*

²¹ *Id.*

²² *See generally* Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

specific, and each set of instructions provides item-by-item instructions to the corresponding form.²³ Further, the instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.²⁴ Specifically, the website instructions for completing FCC Form 471 for Year 3 provide that each form must be a "correct OMB-approved FCC Form 471, with a date of September 1999 in the lower right-hand corner."²⁵

8. Moreover, we are not persuaded by Elkhart's assertion that the filing deadline should be waived because SLD did not return Elkhart's application within the filing window. The FCC Form 471 instructions state that if a school or library does not provide the information requested on this form, "the processing of your application may be delayed or your application may be returned to you without action."²⁶ Thus, applicants failing to properly complete the required application or otherwise fail to follow program rules, run the risk that their applications may not be considered within the filing window.

9. SLD received a number of applications that used the wrong form for Funding Year 3. If we were to grant a waiver for using the wrong FCC Form 471, we would then have to grant similar relief to other entities that made similar mistakes, which would in turn increase administrative burdens for SLD. For Funding Year 3, SLD received over 36,000 applications.²⁷ It is impractical, if not impossible, for SLD to review each application and notify applicants of errors prior to the close of the filing window. Instead, the burden of ensuring that complete and accurate information is provided on the correct forms properly rests with applicants themselves. We therefore conclude that, under these circumstances, Elkhart has failed to make a showing warranting relief and, therefore, its Request for Review must be denied.

²³ See generally Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 2 FCC Form 471), OMB 3060-0806 (December 1998); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 3 FCC Form 471), OMB 3060-0806 (September 1999).

²⁴ *Id.*

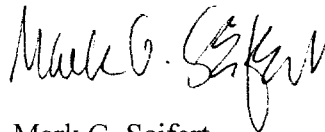
²⁵ Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

²⁶ *Id.*

²⁷ Universal Service Administrative Company, Schools and Libraries Program, Funding Commitments: Year 3 Funding Commitments, <<http://www.sl.universalservice.org/funding/y3>>.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review, filed July 10, 2000 by Elkhart Community Schools, Elkhart, Indiana IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert". The signature is written in a cursive, flowing style.

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau